FILE COPY.

Office Supreme Court U. S.
FILED
FEB 20 1905
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

ON APPEAL FROM THE

Circuit Court of Appeals for the Second Circuit.

OCTOBER TERM, 1904.

No. ~~532~~ 180.

EDWARD B. WHITNEY, as Trustee in Bankruptcy of Dresser & Co.,

Appellant,

against

EMMA B. DRESSER,

Appellee.

MOTION TO ADVANCE.

GEORGE H. GILMAN,
Attorney for Appellant,
67 WALL STREET,
New York City.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

In the Supreme Court of the United States,

OCTOBER TERM, 1904.

EDWARD B. WHITNEY, as Trustee in Bankruptcy of Dresser & Co.,
Appellant,

AGAINST

EMMA B. DRESSER,
Appellee.

No. 532.

Appeal from the Circuit Court of Appeals for the Second Circuit.

Motion to Advance.

This is an appeal from the affirmance of an order allowing a claim against a bankrupt estate by the wife of one of the bankrupts. The claim had been reserved by the referee prior to the election of the trustee. It was not accompanied by a written instrument under § 57*b* of the Bankruptcy Act.

The appeal is based upon a certificate by Mr. Justice PECKHAM that in his opinion the determination of the questions involved in the allowance of this claim is essential to a uniform construction of the Bankruptcy Law.

The principal question presented is this: *Is the burden of proof, when objections are filed by the trustee in bankruptcy under § 57d. to a claim presented against the bankrupt estate, upon the trustee or upon the claimant?*

It is respectfully submitted that, as this is a question which must arise frequently all over the United States, it is important that a uniform construction of the act should be obtained as early as possible.

With relation to the form of the record an explanation may be necessary from the fact that the record contains no findings of fact and conclusions of law under General Order XXXVI, subdivision 3. The Circuit Court of Appeals did not make and file such findings and conclusions and after the advisability of an appeal was determined upon it was too late to apply for that within the thirty days allowed by subdivision 2; and moreover it appeared to us as to the court that this case is not within the intent of subdivision 3, since the question does not arise upon the evidence, the only questions to be presented to this court being whether the proof of claim stated a valid claim upon its face and whether as above stated the burden of proof is upon the claimant or upon the trustee.

In order to obtain an early decision the appellant is willing to submit the cause upon briefs without oral argument, if permitted.

GEORGE H. GILMAN,
Of Counsel for Appellant.

Service of a copy of the foregoing and notice of motion for February 20, 1905, at one o'clock is this day admitted.

Dated N. Y., February 11, 1905.

ADRIAN H. LARKIN,
Of Counsel for Emma B. Dresser.